

111TH CONGRESS  
1ST SESSION

# S. 916

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 28, 2009

Mr. SCHUMER (for himself and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ed Walker Memorial  
5       Act for Improvements to the Energy Employees Occupa-  
6       tional Illness Compensation Program”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Beginning in the mid-1940s, workers at  
4 hundreds of facilities owned by the Federal Govern-  
5 ment and entities in the private sector produced and  
6 processed radioactive materials for use in the nu-  
7 clear weapons program of the United States.

8 (2) Those workers at nuclear weapons facilities  
9 helped to build the nuclear arsenal that served as a  
10 deterrent to the Soviet Union during the Cold War,  
11 but many of those workers paid a high price in  
12 terms of their health.

13 (3) During the Cold War, many workers at nu-  
14 clear weapons facilities were exposed to radiation  
15 and placed in harm's way by the Department of En-  
16 ergy and contractors, subcontractors, and vendors of  
17 the Department—

18 (A) without the knowledge and consent of  
19 the workers;

20 (B) without adequate radiation monitoring;  
21 and

22 (C) without necessary protections from in-  
23 ternal or external occupational radiation expo-  
24 sures.

25 (4) Because of the inequities described in para-  
26 graph (3) and the resulting potential harm to work-

1       ers employed at nuclear weapons facilities, Congress  
2       designated classes of Cold War-era workers at the  
3       Paducah, Kentucky, Portsmouth, Ohio, Oak Ridge  
4       K-25, and Amchitka Island test sites as members of  
5       the Special Exposure Cohort under the Energy Em-  
6       ployees Occupational Illness Compensation Program  
7       Act of 2000 (42 U.S.C. 7384 et seq.).

8           (5) The contribution of the State of New York  
9       to the security of the United States throughout the  
10      Cold War was very significant.

11          (6) Thirty-six former atomic weapons employer  
12      facilities or Department of Energy facilities that  
13      produced and processed radioactive materials, car-  
14      ried out classified research, operated nuclear reac-  
15      tors, and processed high level nuclear waste are lo-  
16      cated in New York. Fourteen of those facilities are  
17      located in the western region of New York.

18          (7) Research by the Department of Energy, the  
19      National Institute for Occupational Safety and  
20      Health, the Advisory Board on Radiation and Work-  
21      er Health, and congressional committees indicates  
22      that—

23            (A) workers at certain atomic weapons em-  
24      ployer facilities and Department of Energy fa-  
25      cilities were not adequately monitored for inter-

1           nal or external exposures to ionizing radiation  
2           to which the workers were exposed during the  
3           1940s, 1950s, and 1960s; and

4           (B) at other facilities, records were not  
5           maintained, or the records from those facilities  
6           are not reliable or failed to measure the radio-  
7           active isotopes to which workers were exposed.

8           (8) No personal radiation dosimetry monitoring  
9           records are available from the Bethlehem Steel site  
10          in Lackawanna, New York, which falls within the  
11          definition of an atomic weapons employer facility  
12          under section 3621 of the Energy Employees Occu-  
13          pational Illness Compensation Program Act of 2000  
14          (42 U.S.C. 7384l).

15          (9) Section 3626(b) of the Energy Employees  
16          Occupational Illness Compensation Program Act of  
17          2000 (42 U.S.C. 7384q(b)) authorizes the President,  
18          upon the recommendation of the Advisory Board on  
19          Radiation and Worker Health, to designate addi-  
20          tional classes of employees in the Special Exposure  
21          Cohort if it is not feasible to estimate with sufficient  
22          accuracy the radiation dose that the class received  
23          and there is a reasonable likelihood that the radi-  
24          ation dose may have endangered the health of mem-  
25          bers of the class.

1           (10) On May 28, 2004, the Secretary of Health  
2           and Human Services issued a final rule establishing  
3           procedures for designating additional classes of em-  
4           ployees in the Special Exposure Cohort (69 Fed.  
5           Reg. 30,764).

6           (11) Legislation is needed to provide additional  
7           parameters to the President, the Secretary of Health  
8           and Human Services, and the Advisory Board on  
9           Radiation and Worker Health for evaluating peti-  
10          tions for inclusion in the Special Exposure Cohort of  
11          classes of employees with respect to which there was  
12          limited or nonexistent individual radiation exposure  
13          monitoring or an absence of records.

14 **SEC. 3. ADDITION OF CLASSES OF FORMER NUCLEAR**  
15 **WEAPONS PROGRAM WORKERS TO THE SPE-**  
16 **CIAL EXPOSURE COHORT UNDER ENERGY**  
17 **EMPLOYEES OCCUPATIONAL ILLNESS COM-**  
18 **PENSATION PROGRAM.**

19          Section 3626(b) of the Energy Employees Occupa-  
20          tional Illness Compensation Program Act of 2000 (42  
21          U.S.C. 7384q(b)) is amended—

22               (1) by inserting “(A)” after “(1)”;

23               (2) by redesignating paragraph (2) as subpara-  
24          graph (B);

1           (3) by striking the period at the end and insert-  
2           ing “; or”; and

3           (4) by adding at the end the following:

4           “(2)(A) in the case of a class of employees em-  
5           ployed at a Department of Energy facility or an  
6           atomic weapons employer facility during a period (in  
7           the aggregate) of at least 250 days (or a shorter du-  
8           ration connected to discrete events, as determined by  
9           the President) during which—

10           “(i) the employees in the class had the po-  
11           tential for exposure to occupational ionizing ra-  
12           diation from production or processing materials  
13           related to atomic weapons, or engaged in re-  
14           search, development, testing, assembly, dis-  
15           assembly, decontamination, decommissioning, or  
16           waste management, or work related to such ac-  
17           tivities; and

18           “(ii)(I) fewer than 50 percent of the em-  
19           ployees in the class were individually monitored  
20           on a regular basis (using reliable methods and  
21           procedures) under a formal health physics pro-  
22           gram for exposure to internal and external ion-  
23           izing radiation for the types of radiation and  
24           specific radioactive isotopes to which the em-

1 employees had the potential for exposure during  
2 the period when the employees were exposed;

3 “(II) individual internal and external expo-  
4 sure records for the types of radiation and spe-  
5 cific radioactive isotopes to which the employees  
6 in the class were potentially exposed at the fa-  
7 cility during the period when the employees  
8 were exposed are nonexistent or are not avail-  
9 able; or

10 “(III) to the extent that a portion of indi-  
11 vidual internal or external records are available  
12 for the period from the facility, individual radi-  
13 ation doses cannot be reliably determined for  
14 more than  $\frac{2}{3}$  of the employees in the class  
15 using the individual internal and external moni-  
16 toring records from the facility; and

17 “(B) in the case of a class of employees em-  
18 ployed at a facility with respect to which the Direc-  
19 tor of the National Institute for Occupational Safety  
20 and Health has made the determination described in  
21 section 3169(b)(4) of the Ronald W. Reagan Na-  
22 tional Defense Authorization Act for Fiscal Year  
23 2005 (Public Law 108–375; 42 U.S.C. 7384 note)  
24 during the residual contamination period described  
25 in such section, the employees at the facility met the

1 criteria described in clauses (i) and (ii) of subpara-  
2 graph (A).”.

3 **SEC. 4. REGULATIONS.**

4 (a) IN GENERAL.—Not later than 90 days after the  
5 date of the enactment of this Act, the Secretary of Health  
6 and Human Services shall issue regulations for desig-  
7 nating additional classes of employees as members of the  
8 Special Exposure Cohort under section 3626(b)(2) of the  
9 Energy Employees Occupational Illness Compensation  
10 Program Act of 2000, as amended by section 3.

11 (b) BETHLEHEM STEEL SITE.—Not later than 90  
12 days after the date of the enactment of this Act, the Sec-  
13 retary of Health and Human Services shall determine  
14 under 3626(b)(2) of the Energy Employees Occupational  
15 Illness Compensation Program Act of 2000, as amended  
16 by section 3, whether workers employed at the Bethlehem  
17 Steel site in Lackawanna, New York, meet the require-  
18 ments of such section for membership in the Special Expo-  
19 sure Cohort.

20 (c) REPORT.—Not later than 90 days after the date  
21 of the enactment of this Act, the Secretary of Health and  
22 Human Services shall submit to Congress a report that  
23 identifies each of the following:

24 (1) Any Department of Energy facilities or  
25 atomic weapons employer facilities (as those terms



1       are defined in section 3621 of the Energy Employees  
2       Occupational Illness Compensation Program Act of  
3       2000 (42 U.S.C. 7384*l*)) at which classes of employ-  
4       ees were employed that meet the requirements for  
5       membership in the Special Exposure Cohort under  
6       section 3626(b)(2) of the Energy Employees Occu-  
7       pational Illness Compensation Program Act of 2000,  
8       as amended by section 3.

9               (2) The number of such classes.

10              (3) The number of employees in each such  
11      class.

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